

PCA Case No. 2023-37

IN THE MATTER OF AN ARBITRATION UNDER THE UNITED STATES-COLOMBIA
TRADE PROMOTION AGREEMENT, ENTERED INTO FORCE ON 15 MAY 2012
(the “TPA”)

and

THE ARBITRATION RULES OF THE UNITED NATIONS COMMISSION ON
INTERNATIONAL TRADE LAW, AS REVISED IN 2021 (the “UNCITRAL Rules”)

Between:

SEA SEARCH-ARMADA, LLC

(“Claimant”)

- and -

THE REPUBLIC OF COLOMBIA

(“Respondent”, and together with Claimant, the “Parties”)

Supplementary Decision and Order for an Evidence Preservation Protocol

Arbitral Tribunal

Mr. Stephen L. Drymer (Presiding Arbitrator)
Mr. Stephen Jagusch KC
Dr. Claus Von Wobeser

Registry

Mr. José Luis Aragón Cardiel
Permanent Court of Arbitration

Tribunal Assistant

Ms. Dina Prokić

28 June 2024

I. INTRODUCTION

1. The present Supplementary Decision and Order for an Evidence Preservation Protocol (“**Supplementary Decision**”) is issued further to the Decision on Claimant’s Application for Interim Measures dated 3 June 2024 (“**Decision**”).
2. In accordance with the Decision, and more particularly its paragraph 80, the Parties entered into discussions with the aim of jointly proposing to the Tribunal agreed terms of an evidence preservation protocol, [REDACTED]
3. The Parties’ efforts were largely successful – and where unsuccessful, their differences appear to have narrowed over the course of discussion – circumstances for which the Tribunal wishes to express its gratitude as well as its admiration for all involved.
4. On 21 June 2024,¹ the Parties submitted two documents to the Tribunal: a proposed evidence preservation protocol; [REDACTED] there remained certain differences between them with respect to the proposed protocol.

II. DECISION AND ORDER

5. Having considered the Parties’ proposals – including both the points agreed and their respective positions regarding the points on which they differ² – the Tribunal issues the Evidence Preservation Protocol annexed hereto (“**Evidence Preservation Protocol**”).
6. The Evidence Preservation Protocol shall have immediate effect and shall apply throughout the pendency of the dispute that is the subject of this arbitration.

[Signatures on the following page]

¹ Upon application by the Parties, the Tribunal granted several extensions to the 7-day deadline set out in para. 81 of the Decision on Interim Measures.

² The Parties’ positions and suggestions on these points were set out in their 21 June 2024 *proposed protocol*.

PLACE OF ARBITRATION: LONDON, UNITED KINGDOM

DATE: 28 JUNE 2024

THE ARBITRAL TRIBUNAL:



Mr. Stephen Jagusch KC



Dr. Claus Von Wobeser



**Mr. Stephen L. Drymer
(Presiding Arbitrator)**

PCA Case No. 2023-37
Sea Search-Armada, LLC v. Republic of Colombia

(Annex to Supplementary Decision and Order for an Evidence Preservation Protocol)

EVIDENCE PRESERVATION PROTOCOL

I. Introduction

1. This Evidence Preservation Protocol (“**Protocol**”) is issued pursuant to paragraph 80(a) of the Decision on Claimant’s Application for Interim Measures dated 3 June 2024, (“**Decision**”) and the Supplementary Decision and Order for an Evidence Preservation Protocol dated 28 June 2024 (“**Supplementary Decision**”) in PCA Case No. 2023-37 Sea Search-Armada, LLC v. Republic of Colombia (“**Arbitration**”).

II. Scope of the Protocol

2. The Protocol sets forth the measures that the Republic of Colombia (“**Colombia**”) has implemented and/or shall implement to ensure that any items identified, recovered or salvaged, or eventually identified, recovered or salvaged, from the Galeón San José (“**Items**”), as well as other Evidence (as defined below), are catalogued, preserved and protected for purposes related to the Arbitration.¹
3. Neither the act of entering into the Protocol nor any of the evidence preservation measures described in the Protocol amount to an admission that the Galeón San José is located at the site reported in the document entitled “Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia”.²
4. It is understood that the Protocol “*should ... impose only a fairly limited practical burden on Respondent beyond that to which [Respondent] says it is subject in any event under its own constitutional and legislative regime*”.³

III. Evidence covered by the Protocol

5. The evidence covered by the Protocol (“**Evidence**”) includes:⁴

¹ Application for Interim Measures, ¶ 43.

² **Exhibit C-10/R-4**, Confidential Report on the Underwater Exploration by Glocca Morra Company in the Caribbean Sea, Colombia, 26 February 1982.

³ Decision on Claimant’s Application for Interim Measures, ¶ 72 and 80(a); Application for Interim Measures, ¶ 72.

⁴ Decision on Claimant’s Application for Interim Measures, ¶ 69 and 80(a); Application for Interim Measures, ¶ 19.

- a. Any and all objects or artifacts identified, recovered or salvaged as part of Colombia's expedition(s) to the Galeón San José (*previously abbreviated as "Items"*), including any information on their condition;
- b. Any and all recordings or records (including visual recordings, sound recordings, electromagnetic readings, sonar readings, written records, etc.) during and resulting from the exploration and salvage expedition(s) conducted by Colombia (including notes taken by Colombian Navy and government officials and any private company involved in the operation); and
- c. Any and all records, registration, catalogue, classification, study, memorandum, summary, or any similar documents, written or otherwise, related to the identification or salvage and subsequent handling of any identified or recovered object or artifact from the Galeón San José.

IV. Catalogue of Evidence

6. Colombia shall create and maintain an up-to-date catalogue of the Evidence ("**Catalogue**").

V. Evidence excluded from the Catalogue

7. The Catalogue of Evidence will not include the coordinates at which any and all of the Items are identified, recovered or salvaged ("**Coordinates**").

VI.

- 8.

VII. Confidentiality; Privilege

9. The Evidence, the Catalogue and the Log will be held in confidence by Colombia, subject to disclosure in accordance with a potential further order or orders by the Tribunal.⁶
10. Disclosure or production of all or part of the Evidence, Catalogue or Log (if ordered by the Tribunal) shall be without prejudice to Colombia's right to redact legally privileged information from any document disclosed or produced. If privileged information is redacted, Colombia shall produce a "*privilege log*" indicating with reasonable and appropriate specificity the type of information redacted and the legal privilege asserted in relation to each redaction. Any information redacted shall be preserved by Colombia

⁵ Decision on Claimant's Application for Interim Measures, ¶ 80(d).

⁶ Decision on Claimant's Application for Interim Measures, ¶ 80(d).

and shall be subject to potential production as may be ordered by the Tribunal after hearing the Parties.

VIII. Obligation to provide updates

11. Colombia shall report to the Tribunal and Sea Search-Armada, LLC on a bi-monthly basis on whether any Evidence has been collected, as well as on the implementation of this Evidence Preservation Protocol, the Archeological Management Plan and all preservation and conservation strategies referenced in Sections IX and X below with respect to that Evidence. Colombia will further update Sea Search-Armada, LLC in case of any change in the Archeological Management Plan or any of the strategies designed to protect and preserve Evidence. The obligation to provide such reports and updates does not derogate from the principle set out in paragraph 9 above regarding the confidentiality of the Evidence, Catalogue [REDACTED]. Similarly, the provisions of paragraph 10 above, concerning legal privilege, apply *mutatis mutandis* to the reports and updates to be provided in accordance with the present paragraph.
12. Colombia will promptly, and in any case within 7 business days, notify, the Tribunal and Sea Search Armada, LLC of any changes in Colombia's laws or regulations that would affect the Evidence Preservation Protocol or Archeological Management Plan.
13. Colombia will promptly, and in any case within 7 business days, notify, upon knowledge, the Tribunal and Sea Search-Armada, LLC of any departures from or violations of the Evidence Preservation Protocol whether by Colombia or any third parties.

IX. Preservation measures covered by the Protocol

14. As at the date of this Protocol, it is understood that the evidence preservation process of the Galeón San José has two phases.

15. [REDACTED]

16. [REDACTED]

17. [REDACTED]

18. [REDACTED]

19. [REDACTED]

20. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

X. The Archeological Management Plan of the Galeón San José

21. The Archeological Management Plan of the archeological context Galeón San José (the “AMP”) will be the roadmap of the Archeological Protected Area (as defined below) in terms of research, conservation, sustainability and management. Also, the scientific project of the Galeón San José will be developed in compliance with the AMP. The AMP is part of the declaration of Archeological Protected Area of the archeological context Galeón San José (“APA”)⁷ of a segment of 1 km² of Colombia’s national territory, located in the waters of the Colombian Caribbean Sea.

22. For clarity, the AMP is an integral part of the Protocol.

23. The AMP includes: (a) a program for the conservation of cultural and natural heritage, and (b) a security program for the APA.

⁷ Resolution No. 0712 of 22 May 2024, Article 1.

24. The program for the conservation of cultural and natural heritage contemplates the development of four projects focused on different aspects of conservation. The development of the projects will depend on the state of conservation of the Items, artifacts or remains:⁸

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

25. [Redacted text block]

26. [Redacted text block]

⁸ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 219-222

⁹ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 233-236.

[REDACTED]

¹⁰

27.

[REDACTED]

¹²

28.

[REDACTED]

29.

[REDACTED]

¹⁰ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 86.

¹¹ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 86.

¹² Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 86.

¹³ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, 63,77,76,78,80,81,86,87 and 88.

¹⁴ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 101-102.

¹⁵ Instituto Colombiano de Antropología e Historia, Archaeological Management Plan, May 2024, ¶ 77.

PLACE OF ARBITRATION: LONDON, UNITED KINGDOM

DATE: 28 JUNE 2024

THE ARBITRAL TRIBUNAL:



Mr. Stephen Jagusch KC



Dr. Claus Von Wobeser



**Mr. Stephen L. Drymer
(Presiding Arbitrator)**

PCA Case No. 2023-37
Sea Search-Armada, LLC v. Republic of Colombia

EVIDENCE PRESERVATION PROTOCOL

Schedule 1

LOG OF COORDINATES

1. Pursuant to paragraphs 76 and 80(d) of the Decision on Claimant’s Application for Interim Measures dated 3 June 2024 (“**Decision**”) and the Supplementary Decision and Order for an Evidence Preservation Protocol dated 28 June 2024 (“**Supplementary Decision**”), and in accordance with the Evidence Preservation Protocol dated 28 June 2024 (“**Protocol**”), the present document contains the coordinates describing the location of the archeological context Galeón San José.
2. This document will be in the exclusive possession and control of the Republic of Colombia, subject to disclosure in accordance with the Decision, Supplementary Decision and Protocol.
3. The coordinates describing the location of the archeological context Galeón San José are the following:

4. Pursuant to paragraph 80 (d) of the Decision, the log of coordinates shall be updated (with the date of each update recorded).
5. The information contained in this document is confidential and concerns Colombia’s essential national security interests pursuant to Colombian law.